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ABSTRACT

This report discusses factors that lead to wide disagreement among educators about proper definitions of student rights and responsibilities. These factors include (1) the particular era in which a definition is formulated, (2) the role perspectives, (3) the values held, (4) the anticipated consequences, and (5) the implicit concepts held concerning the nature of education. The author calls for an expansion of student rights balanced against institutional (societal) needs. He argues that students should have the rights to (1) free expression of their religious, political, and/or philosophical beliefs, (2) wide latitude in personal dress and appearance, and (3) due process. (JF)

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A SENSIBLE ASSESSMENT OF STUDENT RIGHTS AND RESPONSIBILITIES

The increasing frequency of litigation concerning student rights is evidence of the widespread disagreement concerning a "proper" definition of student rights and responsibilities. Such disagreement is to be expected whenever society finds itself on the cutting edge of redefinition. It appears that disagreement concerning the issues involved in student rights and responsibilities will become wider and more intense until some new plateau of temporary resolution is reached. Because the rights and responsibilities of students are a subpart of societal views of the rights and responsibilities of minors, a wider perspective in discussion is necessary. The old convenient labels such as "conservative" and "liberal" are not adequate in explaining differing views. The issues are too complex for such simplistic explanations. Some who are typed as being "conservative" are becoming champions of the individual rights of students. Others typed as "liberal" are expressing views which are supportive of the status quo.

A "sensible" assessment usually means an assessment which is congruent with one's own particular viewpoint. Since the viewpoints held are divergent, it is doubtful that there will be any widespread agreement on what is "sensible".

It appears that what is "sensible" in terms of student rights and responsibilities reflects a variety of factors:

1. the particular era in which a definition is formulated
2. the role perspective
3. values held
4. the anticipated consequences
5. the implicit concepts held concerning the nature of education

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The interaction of the factors as they impinge upon the individual probably largely determines the resulting view of student rights and responsibilities.

The following is a brief discussion of each of the factors.

1. The particular era in which a definition is formulated is a shorthand way of summarizing the way the culture or society views the nature of human beings. It is difficult to explain how societies reach general consensus. It is equally difficult to explain the full measure of significance of the consensus which is reached. Nonetheless, over a span of time, it is relatively easy to observe the changing substance of consensus.

It has been only relatively recently in the history of mankind that there has been widespread acceptance of the idea that there are residual rights possessed by human beings, rights which are not externally conferred by the body politic. In more recent history, these rights have been in the slow process of extension to all adults. From an historical perspective, extension of rights to children and students has occurred after the extension of similar rights to adults. It appears that the current extension of adult rights is being followed closely by extension of rights to students.

From an era in which children were viewed as chattel primarily, the mainstream of Western civilization moved to an era in which children were viewed as passive entities to be protected from the abuses of society. As recently as the nineteenth century, children less than ten years of age were employed in subhuman conditions and were worked sixteen hours a day in factories. Only in 1802, was the first law regulating child labor passed in England; this law simply prohibited the employment in factories of pauper children under the age of nine years. It wasn't until 1836 that Massachusetts, the first such state, passed a law regulating child labor. The protection of a passive entity, the child, was clearly the focal point of concern. Naturally, such a view of the child was reflected in the school which was accorded the widest range of authority over students.

Gradually protective laws concerning children were extended. During the twentieth century, the view of the child as a passive entity to be protected from the abuses of society is slowly being modified to include the view of the child as an active entity with certain types of residual rights many of which are simply an extension to children of already conceded adult rights. In short, the tolerance limits for certain types of student behavior are being extended slowly.

This shift in consensus concerning the nature of the child including a change in concept of minors as having an active self-initiating nature rather than simply a passive reflective-of-adults nature is responsible in large part for the differing opinions concerning the rights of students. Some adults have made this intellectual transition; others have not.

Although there is no method by which to establish definitely the validity of this analysis, it is clear that society has accepted a tolerance limit beyond that expressed in the 1923 decision in the case of Pugsley vs. Sellmeyer in which the actions of school authorities were upheld in denying admission to a student over eighteen years of age who wore talcum powder.

2. Perspectives induced by the role of the individual also influence conclusions reached about rights and responsibilities. Teachers and administrators faced with the difficult problems of control of student behavior generally perceive the added difficulties in maintaining such control when the rights of students are extended. Those who do not have the responsibility of limiting student behavior are often completely oblivious of the difficulties involved.

By most evidence available, the problems of maintaining order in school settings are increasing significantly. A recent Gallup finding appears to indicate the over-riding public concern about discipline in the schools. A survey of 110 school districts for the Senate Subcommittee on Juvenile Delinquency included the following statistics concerning in-school crimes committed:

IN-SCHOOL CRIMES
110 SCHOOL DISTRICTS

	1964	1968
Homicides	15	26
Forcible Rapes	51	81
Robberies	396	1,508
Aggravated Assaults	475	680
Assaults on Teachers	25	1,801
Assaults on Students	1,601	4,267
Narcotics	73	854

Faced with daily problems of control of behavior and increasing public criticism, school personnel tend to view the first priority as being the establishing and maintaining of order in schools with the question of student rights being of secondary importance and certainly less pressing. Those oblivious to the behavior control problem discount the seriousness or even the existence of such problems.

3. The priority of values held by the individual perceiver also influences the positions taken in regard to the rights of students. To those who value individual rights above the orderliness of society, the problems of control of behavior is secondary to the primacy of student rights. To those who value orderliness above individual rights, any extension of such rights at the expense of orderliness is not sensible. To those who view the "establishment" in any of its forms as being the enemy, the resolution of the issues concerning student rights is actually tangential to their primary objective, destruction of the status quo.

4. Differing projections of consequences of certain extensions of student rights also is responsible for differing viewpoints concerning whether or not such rights should be extended. There are those who assume that any extension of rights to students necessarily leads to greater problems in controlling the behavior of students. If one projects that as a consequence of relaxation of limitations on

the dress and appearance of students a plethora of behavioral problems will result, and if one is concerned about such problems, opposition to relaxation of dress codes is understandable. If one is concerned about behavioral problems in schools but projects no negative consequences in terms of behavior from a relaxation of dress codes, then another type of conclusion might be anticipated.

5. The assumptions often held implicitly about the nature of education also influence conclusions about what is sensible in defining student rights. If education is viewed as being primarily a process of indoctrination, then widening of tolerance limits for student dissent is dysfunctional. The indoctrination concept assumes that truth insofar as it is known is held by school personnel who have an obligation to transmit that truth to students. Richard L. Berkman, in his article "Students in Court: Free Speech and the Functions of School in America" published in November 1970 issue of the Harvard Educational Review makes a rather convincing case that a changing concept of the purpose of schools underlies the changing views concerning the rights of students.

Given the lack of consensus in terms of the five factors discussed, it is inevitable that these should be a resulting lack of consensus concerning a sensible assessment of student rights. In an effort to provide one framework for discussion, the following points are offered for consideration:

1. The era in which children are viewed as chattel is long passed. Children and students are more and more viewed as active entities with individual integrities which should be given the widest possible latitudes to develop.

2. Extension of rights to students should consider a balance between institutional (societal) needs and individual rights. Rights even in the case of adults are not absolute. The rights of an individual should not be allowed to limit similar rights of other individuals. In the absence of clear evidence that extension of rights to individual students will unnecessarily limit the rights of other individuals (students and/or adults) or result in the diminishing of the collective good,

the rights of the individual student should be extended. Extension of rights is not necessarily a zero sum type of game in which a gain must be paired with a loss. The extension of rights of adults in our society has demonstrated that extension of rights can benefit virtually all citizens.

3. Certain types of consequences can be tested and these consequences should be examined as part of a rational discussion of rights.

4. The primary function of schools is to provide proficiency in basic skills, open alternative thought patterns to students to present probable consequences for consideration, and to stimulate a variety of aesthetic and intellectual developments. The primary function of schools is not indoctrination.

These four points have led me to the following conclusions.

Students should have the right to express their religious, political, and/or philosophical beliefs. They should have the right of intellectual dissent.

Those who oppose such a conclusion do so usually on the basis of one or two premises:

the assertion of intellectual dissent and the right to express religious, political, and/or philosophical beliefs leads to uncontrolled, disorderly conduct.

the major function of the school is to indoctrinate; consequently dissent is dysfunctional.

Judicial guarantee of the rights of students as in the case of refusal to salute the flag because of violation of religious beliefs has not resulted in widespread disorder. Neither has judicial sanction of the right to refuse to participate in the salute to the flag on the basis of political and/or philosophical belief. In short, the dire predictions of negative consequences of such judicial rulings in terms of disorderly student behavior have not been supported in fact. The orderly expression of dissent might, in fact, tend to minimize certain types of disruptive behavior.

The proponents of the indoctrination concept of education assume that they will forever be in control of the levers of power to decide upon the substance of indoctrination. Many of these proponents are militant antagonists to mainland China and the Soviet Union on the basis of the repressive totalitarianism in those countries. To assert that it is only the substance of the indoctrination which is of concern is also to assert a monopoly on truth, a doctrine which is antithetical to a pluralistic society.

Individual students should have the right to the widest possible latitude in personal dress and appearance. Some schools have masked their real intention of imposing a set of tastes and standards upon students by asserting negative consequences in terms of student misbehavior if certain types of dress were permitted. At times, the arbitrary stand on the part of some school officials reaches obviously indefensible levels as in the case of the second grade girl sent home by the school principal because the girl came to school wearing a pantsuit.

This assertion of rights of students is not to imply an absolute exercise of such rights. The exercise of rights must respect the rights of others and of the collective good. As in the case of adults, the rights of individual students must be circumscribed by reasonable limits. The limits are,in part,determined not only by the effects upon the rights of others but also by the effects upon the collective good. That behavior which threatens the welfare of others or which prevents the school from fulfilling its educative functions clearly transcends the limits of tolerance. Hence, occupation of school buildings, noisy demonstrations in schools or classrooms, actions which prevent free expression of opinion by others, fall beyond the outer limits. Under certain circumstances, it can be demonstrated that dress and appearance do threaten the order of the school. In such cases limitations are justified. The courts have tended to uphold actions by school officials which circumscribe student rights which, when exercised under

certain conditions, will create disorder. An assertion of threat of disorder is not sufficient. Neither is a possible threat. To admit such bases as a threat of disorder or possible disorder for the exercise of authority is to permit virtually all types of arbitrary and capricious actions. The probability of disorder concept helps to explain what appears at first glance to be a series of contradictory judicial decisions. In certain cases, the right of the school to prohibit the wearing of certain buttons with slogans printed thereon has been upheld on the grounds of probable disorderly result. In other cases, the courts denied the right of school authorities to prohibit the wearing of such symbols as armbands because of the lack of reasonable probability of disorder.

There is one right which is fundamental to all human freedom, i.e. the right to due process. To deny due process to anyone is to assume an absolute knowledge of guilt. This presumption of guilt denies one of the basic premises upon which our judicial structure is based. Failure of school officials to specify charges and failure to afford a fair hearing provide authority with the possibility of applying sanctions in an arbitrary, unfair, and capricious fashion. This is not to imply the necessity for extended-period adversary type hearing procedures. What is implied is that in disciplinary action with long-range consequences, the essence of administrative justice must be preserved both procedurally and substantively. As at least one writer has indicated, it is ironic that many adults fight for the right to a fair hearing in traffic violation cases while at the same time deny this basic right to students whose life chances are significantly lessened by such drastic disciplinary action as long-term suspension or expulsion.

Thus far, the discussion has centered upon the rights of students and no reference has been made to responsibilities. The term "responsibility" will be used in this discussion in a particular manner: by "responsibility" is meant the freedom to experience consequences of actions. Shielding of individuals from the consequences of actions places no limits upon the exercise of rights and invites

chaos and bedlam. Consequences of actions might involve the experiencing of negative or positive sanctions by authority or experiencing the natural result of one's actions as in the case of the child who is hurt upon falling from a tilted desk to the ground.

The necessity of experiencing consequences of actions implies a drastic change in the doctrine of in loco parentis which bequeaths not only responsibility for welfare of minors but also responsibility for preventing actions which result in harmful consequences. Universities cannot reasonably be held responsible for the morals of students while at the same time being forced to eliminate restrictions in campus housing. In secondary schools, elimination of closed campus procedures cannot be satisfactory if the school is to be held responsible for actions of students who leave the campus.

The failure to shift responsibility (the freedom to experience consequences of action) from schools to the individual is in part responsible for the current state of confusion concerning the issues and for the excesses of behavior which are manifest at times.

In those instances in which parents and society are not willing to allow students to experience the full consequences of their actions, then the rights of students must be more circumscribed or perhaps be denied completely. To use a crude example, one cannot extend to the child the right to run across a busy street at will if one wishes to shield the child from the possibility of a fatal injury.

The development and extension of rights to students has been largely in response to the variety and often happenstance forces which are brought to bear. Indefensible actions by school authorities simply tend to propel judicial decisions and/or public opinion into a more determined effort to protect students from the arbitrary use of power and to extend student rights. At times, it appears as if the failure to link more directly rights and responsibilities as herein defined threatens the stability

of our society. Let us hope that the developing decisions concerning student rights and responsibilities will be based upon a rational framework which extends the rights of students to the widest possible spheres while at the same time preserving the orderly and peaceful progression of society.